### UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 19

MCKENZIE-WILLAMETTE REGIONAL MEDICAL CENTER ASSOCIATES, LLC d/b/a MCKENZIE-WILLAMETTE MEDICAL CENTER Case Nos.

: 19-CA-077096 : 19-CA-095797

and

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 49, CTW-CLC

# RESPONDENT'S BRIEF IN SUPPORT OF EXCEPTIONS TO THE DECISION ISSUED BY ADMINISTRATIVE LAW JUDGE GERALD ETCHINGHAM

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As the Respondent in the above-captioned cases, McKenzie-Willamette Regional Medical Center Associates, LLC d/b/a McKenzie-Willamette Medical Center (hereafter, "McKenzie-Willamette" or the "Hospital") hereby submits, by and through the Hospital's Undersigned Counsel, this Brief in Support of McKenzie-Willamette's Exceptions (hereafter, the "Exceptions") to the Decision issued by Administrative Law Judge Gerald Etchingham on June 3, 2013.

#### STATEMENT OF THE CASE

The Charging Party, Service Employees International Union, Local 49, CTW-CLC (hereafter, the "Union"), represents most of the Hospital's employees, save Registered Nurses (hereafter, at times, the "employees"). McKenzie-Willamette and the Union are currently parties to a Collective Bargaining Agreement (hereafter, the "CBA") that took effect on May 11, 2011 and is scheduled to expire on December 31, 2013. See G.C. Ex. 12.

On March 22, 2012, the Union filed with Region 19 (hereafter, the "Region") of the National Labor Relations Board (hereafter, the "Board") an Unfair Labor Practice Charge in which the Union alleged that the Hospital had violated Sections 8(a)(5), and derivatively, 8(a)(1) of the National Labor Relations Act, as amended (hereafter, the "Act"), by refusing to provide the Union with information that related to a grievance the Union filed on behalf

of Ms. Melissa Frost. <u>See</u> Case No. 19-CA-077096. The Charge was later amended by the Union on May 23, 2012.

On January 3, 2013, the Union with the Region an Unfair Labor Practice Charge in which the Union alleged the Hospital violated Sections 8(a)(5), and derivatively, 8(a)(1) of the Act by refusing to provide information that related to health insurance that the Hospital offers to the employees. See Case No. 19-CA-095797.

On February 19, 2013, acting through the Region's Regional Director, the Acting General Counsel (hereafter, for ease of reference, the "General Counsel") issued a Consolidated Complaint (hereafter, for ease of reference, the "Complaint") in which he incorporated the Union's above-referenced allegations. In response, McKenzie-Willamette filed a timely Answer, whereby the Hospital denied the material allegations of the Complaint and set forth several Affirmative Defenses.

A hearing took place on March 12, 2013 in Eugene, Oregon before Administrative Law Judge Gerald Etchingham (hereafter, the "Judge"). From the standpoint of testimony, the hearing included only two (2) witnesses, namely Mr. Joseph West and Ms. Lynn-Marie Crider, who are employed by the Union as an organizer and bargaining coordinator, respectively. Before the Judge issued a Decision, on or about April 30,

2013, the Union and the Hospital filed with the Judge a Joint Motion (hereafter, the "parties' Motion") whereby, based upon a Settlement Agreement executed by the parties earlier that same day (hereafter, the "Settlement Agreement"), the parties requested that the Complaint be dismissed. The parties' Motion was opposed by the General Counsel. On May 30, 2013, the Judge issued an Order (hereafter, the "Order") in which he denied the parties' Motion. A few days later, on June 3, 2013, the Judge issued a Decision (hereafter, the "Decision") whereby he found that McKenzie-Willamette had violated the Act in the ways alleged by the General Counsel.

#### **QUESTIONS PRESENTED**

- 1.) Whether the Judge erred by denying the parties' Motion (see Exception Nos. 4, 8, 21, and 23-26);
- 2.) Whether the Judge erred by denying the Hospital's Motion to Dismiss the Complaint based upon the Board's lack of a quorum (see Exception Nos. 1, 8 and 23-26);
- 3.) Whether the Judge erred by imposing <u>Bannon Mills</u> sanctions upon the Hospital (<u>see</u> Exception Nos. 2, 3, 8, 16, 19 and 23-26);
  - 4.) Whether the Judge erred by not affording the Hospital an

opportunity to pursue and present relevant evidence (see Exception Nos. 8 and 23-26);

- 5.) Whether the Judge erred by finding the Hospital violated Sections 8(a)(1) and 8(a)(5) of the Act by delaying the provision of information that related to Ms. Frost (see Exception Nos. 7-9, 15-17 and 23-26); and
- 6.) Whether the Judge erred by finding the Hospital violated Sections 8(a)(1) and 8(a)(5) of the Act by refusing to provide information that related to the employees' health benefits (see Exception Nos. 5, 6, 8, 10-14, 18-20 and 22-26).

### **ARGUMENT**

As explained below, given the bona fide Settlement Agreement into which the parties entered, the Judge erred by denying the parties' Motion. Alternatively, even upon the assumption, solely for the sake of argument, that the Judge properly denied the parties' Motion, the Judge erred in a number of other ways, ranging from his enabling the General Counsel to prosecute the Complaint in spite of the absence of a Board quorum, to the Judge's imposition of Bannon Mills sanctions upon the Hospital only to then deprive the Hospital a full opportunity to defend itself, to erroneous findings on the merits.

### 1.) The Judge Erred by Denying the Parties' Motion to Dismiss the Complaint Based Upon the Settlement Agreement

In Independent Stave Co., 287 NLRB 740 (1987), the Board set forth the factors that apply as part of the agency's evaluation of whether a private settlement entered into by the parties to an unfair labor practice proceeding should be approved by the Board. In the case now before the Board, given what he termed as the "unique circumstances of this case," the Judge found that the Independent Stave factors weighed against the Board's acceptance of, and deferral to, the Settlement Agreement. In particular, the Judge found "great weight is given to the number of charges previously filed against [McKenzie-Willamette] and its related parent company and the corresponding complaints issued." See Order, page 2 (emphasis added). The Judge recognized that not all of the previous charges led to the issuance of a complaint, and so, at least by the Judge's tortured logic, "there is more merit to complaint allegations than charge allegations alone." Id. In addition, the Judge was adverse to accepting the Settlement Agreement because the Agreement was entered into after the close of the hearing and the submission of the General Counsel's post-hearing brief. Id., pages 2-3. Persuaded by an argument made by the General Counsel, the Judge also viewed the Settlement Agreement as "unenforceable and meaningless given the vague and uncertain meaning of the phrase 'in a timely fashion,' the

discretion it gives Respondent, and the lack of a full remedy." <u>Id.</u>, page 3.

Lastly, without any further explanation, the Judge declared the Settlement

Agreement as "vague, unenforceable and likely to lead to further litigation."

Id.

The Judge's application of the Independent Stave factors abounds with error. As noted above, the Judge assigned "great weight," and presumably, therefore, was most persuaded by, the number of charges filed, and the number of corresponding complaint issued against, the Hospital and Community Health Systems, Inc., the Hospital's alleged parent company. See Order, page 2. Aside from the fact the Judge does not identify any of these prior charges by case number, the Judge ignores the fact that any prior charges and / or complaints set forth, obviously, only **allegations** of the Hospital's adversary. Stated another way, the Hospital has not previously been adjudicated as a violator of the Act in any respect. The Judge's reference to the Hospital's alleged parent company is totally irrelevant. Notwithstanding the Judge's error with respect to the identity of the Hospital's parent company, the Judge was not presented with any "single employer" allegation. In summary, the fact the Judge placed "great weight" on previous allegations that the Hospital violated the Act proves only a

willingness on the Judge's part to violate McKenzie-Willamette's due process rights to the extreme.

Though the settlement of an unfair labor practice charge prior to the related hearing may be preferable, the Board certainly does not prohibit parties from entering into post-hearing settlements. Indeed, just before the record closed, the Judge essentially encouraged the parties to continue their pre-hearing efforts to settle the case. See Tr. 124. The simple fact of the matter is that the Board's policy is one in favor of settlement, whether before, during or after the hearing. By confusing preference for policy, the Judge's application of Independent Stave went awry here, as well.

Furthermore, though the Judge found the phrase "in a timely fashion" to be vague, the Judge opted not to address the fact the Settlement Agreement sets forth two (2) definitions of the phrase. Thus, the Settlement Agreement explains that, subject to the Hospital's right to invoke objections based upon the Act, the Hospital will provide the Union with the requested information with sufficient time for the Union to investigate, file and process grievances. See Settlement Agreement, Paragraph 1. As reflected by the CBA, the Union's right to file a grievance is subject to a specific deadline. Similarly, the processing of Grievances takes place under a timeline specified by the CBA. See G.C. Ex. 12, Pages 7-8. Accordingly, although

the Settlement Agreement may not, itself, set forth any pre-calculated deadline for the provision of information, the CBA provides reference markers that provides the clarity that escaped the Judge's analysis.

The Judge not only erred by overlooking what the Settlement Agreement does include by way of remedy, but also by opining that, because "Respondent has indicated its intention to change its health plan benefits," the Settlement Agreement should have included McKenzie-Willamette's pledge to produce the information related to the employees' health benefits. As explained in greater detail below (see pages 18-23), the record does not include any evidence of any current intention on the Hospital's part to make any changes to the employees' health benefits. In fact, through the Settlement Agreement (see Paragraph 2), the Hospital specifically promised that the employees' health benefits would remain unchanged up to the point of the parties' negotiations toward a successor CBA, and even then, the Hospital may or may not make proposed changes to the benefits. The Board should reject these efforts by the Judge to read a crystal ball and attribute to the Hospital now an intention to take an action that, under the Settlement Agreement, could only take place months down the road, and in any event, may not even take place.

In conclusion, the Judge's application of the <u>Independent Stave</u> factors is terribly flawed. Consequently, the Board should set the Judge's rulings aside, approve the Settlement Agreement, dismiss the Complaint and approve withdrawal of the Charges.

### 2.) The Judge Erred by Denying the Hospital's Motion to Dismiss the Complaint Based upon the Absence of a Board Quorum

As established below, because the Board lacked the quorum required by Section 3(b) of the Act, the General Counsel lacked the authority to issue and prosecute the Complaint. Alternatively, insofar as the General Counsel's appointment was invalid, he lacked the authority to issue and prosecute the Complaint.

In Noel Canning v. NLRB, Case No. 12-1153, as the Board is aware, the U.S. Court of Appeals for the District of Columbia Circuit held that two (2) of the Board's current Members, namely Member Sharon Block and Member Richard Griffin, were appointed by the President in violation of the U.S. Constitution. Insofar as the Board has, at all times material to the Exceptions, been comprised of only one other Member, namely Chairman Mark Pearce, the Board has lacked the quorum required by Section 3(b) of the Act. See New Process Steel, L.P. v. NLRB, 130 S. Ct. 2635 (2010).

The absence of the quorum required by Section 3(b) of the Act affects not only the adjudicatory function carried out by the Board, but equally so,

the prosecutorial function of the General Counsel. Under Section 3(d) of the Act, the General Counsel acts "on behalf of the Board," and similarly, carries out the prosecution of unfair labor practice allegations "before the Board." Simply put, the lack of a statutory quorum has suspended the authority of the Board and the General Counsel, alike. Accordingly, the General Counsel had no authority to issue or prosecute the Complaint, and therefore, the Judge should have dismissed the Complaint, as requested by McKenzie-Willamette's counsel at the start of the hearing. See Tr. 17.

Alternatively, the Board should dismiss the Complaint because the current Acting General Counsel's appointment was unlawful, insofar as the Acting General Counsel's appointment was not in compliance with Section 3(d) of the Act and could not properly be made under the Federal Vacancies Reform Act. In relevant part, Section 3(d) of the Act provides that, "[i]n case of a vacancy in the office of the General Counsel the President is authorized to designate the officer or employee who shall act as General Counsel during such vacancy," and expressly limits the timeframe during which an Acting General Counsel may serve, stating, "no person or persons so designated shall so act [...] for more than forty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate." 29 U.S.C. § 153(d). Mr. Lafe Solomon was designated

Acting General Counsel by President Obama effective June 21, 2010, but the President did not submit a nomination of Mr. Solomon to fill the position of General Counsel to the Senate within forty days of the designation, as is required by the Act. It was not until January 5, 2011 that Mr. Solomon's nomination to serve as General Counsel was submitted to the Senate, and Mr. Solomon's nomination has not yet been confirmed by the Senate. The language of the Act clearly prohibited Mr. Solomon from serving as the Acting General Counsel beyond July 31, 2010 (i.e., forty days after his appointment), and therefore since that date, Mr. Solomon has been acting outside of his authority under the Act. Accordingly, Mr. Solomon lacked the authority to issue the Complaint on February 19, 2013, and since that day through the present day, has lacked the authority to prosecute the Complaint.

In an attempt to cure this error, the Board has previously attempted to argue that Mr. Solomon was appointed under the Federal Vacancies Reform Act of 1998, rather than under the stricter standards of Section 3(d) of the Act. However, the Federal Vacancies Reform Act cannot be applied to the appointment of the General Counsel, as there already exists a specific statute that governs the appointment of the General Counsel. While the Federal Vacancies Reform Act does broadly apply to all the offices within executive agencies that are filled by way of presidential appointment with Senate

confirmation and does provide a longer 210-day window for temporary, acting officials, Section 3347 of the Federal Vacancies Reform Act explicitly states that the Federal Vacancies Reform Act only serves as the exclusive means for designating an acting official for a covered position when there is not a more specific statutory provision, such as Section 3(d) of the Act, which provides for such designation. 5 U.S.C. §§ 3345-3347.

The Board's argument that the President could choose to proceed under the Federal Vacancies Reform Act, rather than under Section 3(d) of the Act, as part of Mr. Solomon's nomination, violates some of the most basic tenets of statutory interpretation. First, statutes are to be construed so as to give effect to every word of the statute, and so as not to render any language of the statute superfluous, void or insignificant. See TRW, Inc. v. Andrews, 534 U.S. 19 (2001). Furthermore, it is also a basic principle of statutory interpretation that a statute dealing with a narrow, precise subject will not be rendered void by the enactment of a broader, more generalized statute unless the broader statute specifically repeals the more specific statute. See Nat'l Assoc. of Home Builders v. Defenders of Wildlife, 551 U.S. 644 (2007).

The Board's attempt to justify Mr. Solomon's impermissibly delayed nomination violates both these principles, inasmuch as it allows the more

general Federal Vacancies Act to supersede the explicit language of Section 3(d) of the Act, thereby rendering the language of Section 3(d) of the Act optional rather than mandatory, and, as a result, void, superfluous, and entirely insignificant. Under these principles, it is clear that the Acting General Counsel's authority must be governed by the Act rather than the Federal Vacancies Reform Act, as Section 3(d) of the Act is specific and controlling on the subject of the legal length of an Acting General Counsel's service. Any other result would render the language of Section 3(d) of the Act null and void, which is an impermissible result under time-honored and generally accepted principles of statutory interpretation. Therefore, the Board should dismiss the Complaint in order to respect the express limitations on an Acting General Counsel's authority provided by the Act.

### 3.) The Judge Erred by Imposing <u>Bannon Mills</u> Sanctions Upon the Hospital

Prior to the hearing before the Judge, the General Counsel served a Subpoena *Duces Tecum* on the Hospital's Custodian of Records. As explained by the Hospital's counsel at the hearing before the Judge (see Tr. 13-15), the Hospital did not produce the requested documentation because of a settlement that had been reached between the parties a few days before the start of the hearing. At the time, the Union disagreed that any settlement had been reached. However, neither the Union nor the General Counsel

contended that the Hospital's position was reached or maintained in bad faith. In these circumstances, the Judge's imposition of <u>Bannon Mills</u> sanctions was an abuse of discretion, which the Board ought to now set aside.

### 4.) The Judge Erred by Not Affording the Hospital an Opportunity to Pursue and Present Relevant Evidence

Shortly before the record closed, the Hospital informed the Judge that one of the individuals from whom the Hospital intended to offer testimony was not available due to a medical emergency. Similarly, the Hospital informed the Judge that, given testimony from Ms. Crider, the Hospital had a need to solicit testimony from an attorney working for the International Union, namely Ms. Dora Chen, who, unbeknownst to the Hospital prior to Ms. Crider's testimony, spoke with Ms. Crider concerning the Hospital's response to the Union's information request related to the employees' health benefits. See Tr. 117-119.

In these circumstances, the Judge's refusal to continue the hearing constituted an abuse of discretion. Accordingly, the Board should remand the cases to the Judge with instructions that the Hospital be afforded an opportunity to subpoena these witnesses and offer their testimony into the record.

## 5.) The Judge Erred by Finding the Hospital Violated the Act by "Delaying" the Production of the Information Related to Ms. Frost

As the Judge recognized, the Board's precedent does not impose any "bright line" rule as to the date by which an employer must respond to a labor organization's information request. See Decision, page 8. Instead, on a case-by-case basis, the Board will evaluate whether the General Counsel has established that an employer "unreasonably" delayed production of requested information. Id.

In the case at bar, the Judge's conclusion that McKenzie-Willamette violated the Act by virtue of the "delay" in the production of the information related to Ms. Frost arises from his finding that the Hospital provided no explanation for the delay. See Decision, page 9. By approaching the allegation in this way, however, the Judge effectively shifted to the Hospital the burden of explaining why the delay in the production was reasonable, as opposed to requiring the General Counsel to prove, as the Board's precedent requires, that the delay in the production was unreasonable. For that reason alone, else the Board turn the agency's well-established position on burdens of proof upside down, the Board must reject the Judge's conclusion.

As generally was the case, the Judge also failed to appreciate the significance of the fact that, prior to the hearing, the parties had reached a

settlement of the allegations. For that reason, as explained to the Judge by the Hospital's counsel, the Hospital was not prepared to present any evidence in support of any of its defenses, e.g., call a witness who could justify the "delay" associated with the production of the information related to Ms. Frost. Not only did the Judge refuse to appreciate the conundrum engendered by the circumstances, the Judge proceeded to penalize McKenzie-Willamette for its "failure" to produce the documents targeted by the General Counsel's Subpoena *Duces Tecum*.

In conclusion, the Judge's conclusion that the Hospital violated the Act by virtue of "delaying" the production of the information related to Ms. Frost arises from an erroneous application of the law, and equally so, the deprivation of any meaningful opportunity for the Hospital to present a defense.

6.) The Judge Erred by Finding the Hospital Violated the Act by Refusing to Produce the Information Related to the Employees' Health Benefits

The Judge's determination that McKenzie-Willamette violated the Act based upon the Hospital's refusal to supply the Union with the information

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<sup>&</sup>lt;sup>1</sup> By way of example only, as suggested by the response that Ms. Megan O'Leary, the Hospital's Vice President of Human Resources, provided to the Union in response to the Grievance (see G.C. Ex. 4), one of the defenses raised by the Hospital was lack of substantive arbitrability, which certainly would raise doubt as to whether the Union had any entitlement to the requested information.

related to the employees' health benefits arises from the Judge's one-eye open, one-eye closed consideration of the record.

The General Counsel's case is based solely upon the testimony of Ms. Crider, who testified that, based upon the documents she received in November of 2012 from Ms. O'Leary (via Mr. West), though the Union had not received any formal notice from the Hospital, the Union nonetheless had "some indication that [McKenzie-Willamette] was interested in making some changes." See Tr. 59-60. Ms. Crider further testified that, as part of a telephone conversation on December 17, 2012, Ms. O'Leary made clear that the Hospital did not intend to make any changes to the employees' health benefits for 2013. Id., page 72-73. Shortly thereafter, Ms. Crider received from Ms. O'Leary a letter (see G.C.'s Ex. 14) in which Ms. O'Leary produced documentation relating to the employees' health benefits, but unlike Ms. O'Leary's previous production to Mr. West, Ms. O'Leary's production now included "no document reflecting any change in the employee contribution for healthcare." Id., pages 74-75. Ms. Crider made clear that she did not take Ms. O'Leary's letter as the formal notice required by the CBA as a precondition to the Hospital's right to make changes to employees' health benefits during the life of the CBA. Id., page 75. Similarly, Ms. Crider confirmed that open enrollment for the employee's

health benefits in 2013 occurred at the end of 2012, and through the date of the hearing, the Hospital had not made any changes to the employees' health benefits. <u>Id.</u>, pages 88-92. Ultimately, and most importantly, Ms. Crider confirmed that the purpose of the Union's information request was to prepare for the upcoming contract negotiations, as opposed to any actual intention on the Hospital's part to make immediate changes to the employees' health benefits. <u>Id.</u>, pages 96, 112.

In the Decision, the Judge focused only upon the evidence that, at one moment in time, the Hospital reflected an intention to make changes in 2013 to the employees' health benefits. See Decision, page 11. Notably, the Judge did not take a step back to consider and resolve the entire evidentiary picture, which was comprised of testimony that (1) Ms. O'Leary disavowed any intention on the Hospital's part to make any changes, (2) the Hospital never provided the Union with any formal notice to make changes, and (3) the Hospital has not made any changes to the employees' health benefits. Consequently, the Judge never confront what the record presents as the reality of the case – to wit, ultimately, the Union's information request was tied only to the parties' negotiation toward a new CBA, which, at the time Ms. Crider sent Ms. O'Leary the information request (i.e., November of 2012), would not be taking place for nearly another year.

Ms. Crider conceded that, while the Union will routinely seek information related to employees' health benefits as part of contract negotiations, the Union's own protocol is not to seek the information before the start of the negotiations. In the case at hand, insofar as the CBA is scheduled to expire on December 31, 2013, the Union typically would have requested the information ninety (90) days beforehand (i.e., on or about October 1, 2013). Based upon Ms. Crider's experience, by receiving the information bu such a date, the Union would have been left with plenty of time to review the information. Indeed, Ms. Crider testified that her review of the information she requested from McKenzie-Willamette would have taken her about a week. See Tr. 94-99.

In summary, putting aside questions of relevance (which were improperly disposed of through the Bannon Mills sanction erroneously imposed by the Judge), even under the Union's own protocol in terms of the timing of information requests, the Union's entitlement, if any, to the requested information was roughly a year removed from the date it elected to serve the information request. At the time the Union submitted the information request, the Union may have had some explanation as to why the information was necessary – to wit, the Union saw a possibility that the Hospital would be seeking to make changes to the employees' benefits the

following year. However, as shown by Ms. Crider's testimony, the Union soon realized that no changes would be taking place to the employees' benefits in 2013. Accordingly, the Union ought to have withdrawn the request as premature.

The Union sought the information for a purpose – negotiating a new CBA – that was roughly a year away. The record includes no evidence that such a substantial "head start" was necessary for the Union to go through the requested information. To the contrary, the record shows that Ms. Crider is particularly experienced at, and efficient with, the review of information related to healthcare. By upholding the Judge's findings of a violation, the Board would risk putting employers (as well as labor organizations) at risk of expending needless resources in responding to useless information requests. Between the time that information is requested and the time negotiations begin, the subject(s) of the underlying information requests may have experienced, directly or indirectly, significant change so that the information previously provided is no longer presently relevant.

In summary, the Judge's findings simply fail to account for the fact that, ultimately, the only purpose for the Union's information request was to prepare for negotiations that, at the time the request was submitted, were roughly a year away. The Board should view the Union's information

request as premature, reject the Judge's conclusion and dismiss the related allegations of the Complaint.

#### **CONCLUSION**

For all the reasons set forth above, and based upon the Exceptions filed by the Hospital contemporaneously herewith, McKenzie-Willamette respectfully requests that, based upon the Settlement Agreement, the Board dismiss the Complaint and approve withdrawal of the Charges.

Alternatively, to the extent the Board does not defer to the Settlement Agreement, the Hospital respectfully requests that the Board remove the Bannon Mills sanctions imposed by the Judge and remand the case to the Judge with instructions that the Hospital be afforded an opportunity to present testimony from the witnesses identified by the Hospital's Counsel. Alternatively, to the extent the Board determines the agency should review the merits of the allegations, the Board should reverse the Judge's findings and dismiss the Complaint.

Dated: July 8, 2013
Glastonbury, Connecticut

Respectfully submitted,

/s/\_\_\_\_\_

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## UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 19

MCKENZIE-WILLAMETTE REGIONAL MEDICAL CENTER ASSOCIATES, LLC d/b/a

Case Nos.

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19-CA-077096 19-CA-095797

and

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SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 49, CTW-CLC

#### **CERTIFICATE OF SERVICE**

The Undersigned, Bryan T. Carmody, Esq., being an Attorney duly admitted to the practice of law, does hereby certify, pursuant to 28 U.S.C. § 1746, that, on July 8, 2013, a copy of the Respondent's Brief in Support of Exceptions was served upon the following by email:

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Dated:	Glastonbury, Connecticut
	July 8, 2013

Respectfully submitted,	
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